

House File 603 - Reprinted

HOUSE FILE 603
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 64)

(As Amended and Passed by the House March 22, 2011)

A BILL FOR

1 An Act relating to eminent domain authority and procedures and
2 including effective date and applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 6A.15 Property on state historic
2 registry.

3 1. Property listed on the state register of historic places
4 maintained by the historical division of the department of
5 cultural affairs shall not be removed from the register solely
6 for the purpose of allowing acquisition of the property by
7 condemnation, unless such condemnation is undertaken by the
8 department of transportation.

9 2. Property listed on the state register of historic places
10 maintained by the historical division of the department of
11 cultural affairs shall not be condemned by the state or a
12 political subdivision unless a joint resolution authorizing
13 commencement of the condemnation proceedings is approved by a
14 vote of at least two-thirds of the members of both chambers of
15 the general assembly and signed by the governor. The approval
16 requirements of this subsection shall not apply to condemnation
17 undertaken by the department of transportation.

18 Sec. 2. Section 6A.19, Code 2011, is amended to read as
19 follows:

20 **6A.19 Interpretative clause.**

21 A grant in this chapter of right to take private property
22 for a public use shall not be construed as limiting a like
23 grant elsewhere in the Code for another and different use.
24 Unless specifically provided by law, this chapter shall not
25 be construed to limit or otherwise affect the application of
26 chapters 478 and 479 to the eminent domain authority of the
27 utilities division of the department of commerce.

28 Sec. 3. Section 6A.22, subsection 2, paragraph c,
29 subparagraph (1), Code 2011, is amended to read as follows:

30 (1) (a) If private property is to be condemned for
31 development or creation of a lake, only that number of acres
32 justified as reasonable and necessary for a surface drinking
33 water source, and not otherwise acquired, may be condemned.
34 In addition, the acquiring agency shall conduct a review of
35 prudent and feasible alternatives to provision of a drinking

1 water source prior to making a determination that such
2 lake development or creation is reasonable and necessary.
3 Development or creation of a lake as a surface drinking water
4 source includes all of the following:

5 (i) Construction of the dam, including sites for suitable
6 borrow material and the auxiliary spillway.

7 (ii) The water supply pool.

8 (iii) The sediment pool.

9 (iv) The flood control pool.

10 (v) The floodwater retarding pool.

11 (vi) The surrounding area upstream of the dam no higher in
12 elevation than the top of the dam's elevation.

13 (vii) The appropriate setback distance required by state or
14 federal laws and regulations to protect drinking water supply.

15 (b) For purposes of this subparagraph (1), "*number of acres*
16 *justified as reasonable and necessary for a surface drinking*
17 *water source*" means according to guidelines of the United
18 States natural resource conservation service and according to
19 analyses of surface drinking water capacity needs conducted by
20 one or more registered professional engineers. The registered
21 professional engineers may, if appropriate, employ standards
22 or guidelines other than the guidelines of the United States
23 natural resource conservation service when determining the
24 number of acres justified as reasonable and necessary for
25 a surface drinking water source. The data and information
26 used by the registered professional engineers shall include
27 data and information relating to population and commercial
28 enterprise activity for the area from the two most recent
29 federal decennial censuses unless the district court of the
30 county in which the property is situated has determined by
31 a preponderance of the evidence that such data would not
32 accurately predict the population and commercial enterprise
33 activity of the area in the future.

34 (c) A second review or analysis of the drinking water
35 capacity needs shall be performed upon receipt by the acquiring

1 agency of a petition signed by not less than twenty-five
2 percent of the affected property owners. The registered
3 professional engineer to perform the second review or analysis
4 shall be selected by a committee appointed by the affected
5 property owners and comprised of at least fifty percent
6 property owners affected by the proposed condemnation action.
7 The acquiring agency shall be responsible for paying the fees
8 and expenses of such an engineer.

9 (d) If private property is to be condemned for development
10 or creation of a lake, the plans, analyses, applications,
11 including any application for funding, and other planning
12 activities of the acquiring agency shall not include or provide
13 for the use of the lake for recreational purposes.

14 Sec. 4. Section 6A.24, subsection 3, Code 2011, is amended
15 to read as follows:

16 3. a.(1) For Except as provided in subparagraph (2), for any
17 action brought under this section, the burden of proof shall
18 be on the acquiring agency to prove by a preponderance of the
19 clear and convincing evidence that the finding of public use,
20 public purpose, or public improvement meets the definition of
21 those terms.

22 a. For any action brought under this section relating to
23 condemnation undertaken by the department of transportation,
24 the burden of proof shall be on the department to prove by a
25 preponderance of the evidence that the finding of public use,
26 public purpose, or public improvement meets the definition of
27 those terms.

28 b. If a property owner or a contract purchaser of record
29 or a tenant occupying the property under a recorded lease
30 prevails in an action brought under this section, the acquiring
31 agency shall be required to pay the costs, including reasonable
32 attorney fees, of the adverse party.

33 Sec. 5. Section 6B.54, subsection 10, paragraph a, Code
34 2011, is amended by adding the following new subparagraph:

35 NEW SUBPARAGRAPH. (3) Reasonable attorney fees and

1 reasonable costs not to exceed one hundred thousand dollars,
2 attributable to a determination that the creation of a lake
3 through condemnation includes a future recreational use or that
4 a violation of section 6A.22, subsection 2, paragraph "c",
5 subparagraph (1), subparagraph division (d), has occurred, if
6 such fees and costs are not otherwise provided under section
7 6B.33.

8 Sec. 6. NEW SECTION. **6B.56B Disposition of condemned**
9 **property — two-year time period.**

10 1. When two years have elapsed since property was condemned
11 for the creation of a lake according to the requirements of
12 section 6A.22, subsection 2, paragraph "c", subparagraph (1),
13 and the property has not been used for or construction has
14 not progressed substantially from the date the property was
15 condemned for the purpose stated in the application filed
16 pursuant to section 6B.3, and the acquiring agency has not
17 taken action to dispose of the property pursuant to section
18 6B.56, the acquiring agency shall, within sixty days, adopt a
19 resolution offering the property for sale to the prior owner
20 at a price as provided in section 6B.56. If the resolution
21 adopted approves an offer of sale to the prior owner, the offer
22 shall be made in writing and mailed by certified mail to the
23 prior owner. The prior owner has one hundred eighty days after
24 the offer is mailed to purchase the property from the acquiring
25 agency.

26 2. If the acquiring agency has not adopted a resolution
27 described in subsection 1 within the sixty-day time period, the
28 prior owner may, in writing, petition the acquiring agency to
29 offer the property for sale to the prior owner at a price as
30 provided in section 6B.56. Within sixty days after receipt of
31 such a petition, the acquiring agency shall adopt a resolution
32 described in subsection 1. If the acquiring agency does not
33 adopt such a resolution within sixty days after receipt of the
34 petition, the acquiring agency is deemed to have offered the
35 property for sale to the prior owner.

1 3. The acquiring agency shall give written notice to the
2 owner of the right to purchase the property under this section
3 at the time damages are paid to the owner.

4 Sec. 7. Section 364.4, subsection 1, paragraph a,
5 unnumbered paragraph 1, Code 2011, is amended to read as
6 follows:

7 Acquire, hold, and dispose of property outside the city in
8 the same manner as within. However, the power of a city to
9 acquire property outside the city does not include the power
10 to acquire property outside the city by eminent domain, except
11 if viable alternatives do not exist within the city and the
12 acquisition of the property is necessary for the following,
13 subject to the provisions of chapters 6A and 6B:

14 Sec. 8. Section 403.7, subsection 1, unnumbered paragraph
15 1, Code 2011, is amended to read as follows:

16 A municipality shall have the right to acquire by
17 condemnation any interest in real property, including a fee
18 simple title thereto, which it may deem necessary for or in
19 connection with an urban renewal project under this chapter,
20 subject to the limitations on eminent domain authority
21 in ~~chapter~~ chapters 6A and 6B. However, a municipality
22 shall not condemn agricultural land included within an
23 economic development area for any use unless the owner of
24 the agricultural land consents to condemnation or unless ~~the~~
25 ~~municipality determines that the land is necessary or useful~~
26 viable alternatives to the condemnation of agricultural land do
27 not exist and the acquisition of the property is necessary for
28 any of the following:

29 Sec. 9. NEW SECTION. 423B.11 **Use of revenues — limitation.**

30 The revenue raised by a local sales and services tax imposed
31 under this chapter by a county shall not be expended for any
32 purpose related to a project that includes the condemnation of
33 private property for the creation of a lake according to the
34 requirements of section 6A.22, subsection 2, paragraph "c",
35 subparagraph (1), if the local sales and services tax has not

1 been approved at election in the area where the property to be
2 condemned is located.

3 Sec. 10. Section 455A.5, Code 2011, is amended by adding the
4 following new subsection:

5 NEW SUBSECTION. 7. The authority granted to the commission
6 to acquire real property for purposes of carrying out a
7 duty related to development or maintenance of the recreation
8 resources of the state, including planning, acquisition, and
9 development of recreational projects, and areas and facilities
10 related to such projects, shall not include the authority to
11 acquire real property by eminent domain.

12 Sec. 11. Section 456A.24, subsection 2, unnumbered
13 paragraph 1, Code 2011, is amended to read as follows:

14 Acquire by purchase, ~~condemnation~~, lease, agreement,
15 gift, and devise lands or waters suitable for the purposes
16 hereinafter enumerated, and rights-of-way thereto, and to
17 maintain the same for the following purposes, ~~to wit~~:

18 Sec. 12. Section 456A.24, Code 2011, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 15. The authority granted the department
21 to acquire real property for any statutory purpose relating to
22 the development or maintenance of the recreation resources of
23 the state, including planning, acquisition, and development
24 of recreational projects, and areas and facilities related to
25 such projects, shall not include the authority to acquire real
26 property by eminent domain.

27 Sec. 13. Section 461A.7, Code 2011, is amended to read as
28 follows:

29 **461A.7 ~~Eminent domain~~ Purchase of lands — public parks.**

30 The commission may purchase ~~or condemn~~ lands from willing
31 sellers for public parks. ~~No~~ A contract for the purchase of
32 such public parks shall not be made to an amount in excess of
33 funds appropriated therefor by the general assembly.

34 Sec. 14. Section 461A.10, Code 2011, is amended to read as
35 follows:

1 **461A.10 Title to lands.**

2 The title to all lands purchased, ~~condemned,~~ or donated,
3 hereunder, for park ~~or highway~~ purposes and the title to all
4 lands purchased, condemned, or donated hereunder for highway
5 purposes, shall be taken in the name of the state and if
6 thereafter it shall be deemed advisable to sell any portion of
7 the land so purchased or condemned, the proceeds of such sale
8 shall be placed to the credit of the said public state parks
9 fund to be used for such park purposes.

10 Sec. 15. Section 463C.8, subsection 1, paragraph k, Code
11 2011, is amended to read as follows:

12 *k.* The power to acquire, own, hold, administer, and dispose
13 of property, except that such power is not a grant of authority
14 to acquire property by eminent domain.

15 Sec. 16. REPEAL. Sections 461A.9 and 461A.75, Code 2011,
16 are repealed.

17 Sec. 17. EFFECTIVE UPON ENACTMENT AND APPLICABILITY. This
18 Act, being deemed of immediate importance, takes effect upon
19 enactment and applies to projects or condemnation proceedings
20 pending or commenced on or after that date.